

Before the Hearings Panel

Under the

Resource Management Act 1991

In the matter

of submissions on the proposed Otago Regional Policy Statement 2021 (excluding parts determined to be a freshwater planning instrument)

**SUPPLEMENTARY LEGAL SUBMISSIONS ON BEHALF OF TRANSPower NEW
ZEALAND LIMITED (314 AND FS00314)**

Submissions in response to Minute 14

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MAY IT PLEASE THE PANEL

1. INTRODUCTION

1.1 These supplementary submissions are filed by Transpower New Zealand Limited (**Transpower**) in response to Minute 14 issued by the Panel on 26 April 2023 (**Minute**).¹ As per the Panel's invitation, these submissions concern the Environment Court's recent determination in *Transpower New Zealand Limited v Queenstown Lakes District Council* [2023] NZEnvC 69 (**Determination**).

1.2 The Determination relates to appeals on provisions contained in the proposed Queenstown-Lakes District Plan (**PDP**), specifically provisions relating to regionally significant infrastructure (**RSI provisions**). Transpower was one of the appellants in these proceedings.

1.3 The Determination includes at Annexure A the final RSI provisions to be inserted into the PDP, as approved by the Court. For further context, we refer the Panel to the Court's minute dated 29 August 2022 (attached as **Appendix A**). This is because that minute includes the Court's provisional drafting of the RSI provisions, and also sets out some reasoning for the Court's drafting. That reasoning includes confirmation that:

[1] The drafting in the Annexure reflects the court's careful consideration of parties' submissions and related evidence, the Higher Order documents and the final agreed drafting changes to the decision version provisions ('PDP-DV') proposed by the parties. ...

1.4 That the Court had carried out its own evaluation of the PDP provisions against the higher order direction including the NPSET is clear from comments in the minute such as the following (in the context of policies SP 3.3.24 and SP 3.3.24A):

[16] On the basis of the technical and planning evidence, we find there is a need to modify the PDP-DV to give better effect to the PORPS (and NPSET). However, we take a different drafting approach from that recommended by the planners.

1 Minute 14 in response to Memorandum from Aurora Energy and Others dated 26 April 2023.

1.5 Accordingly, while Transpower agrees with the Panel that the Determination itself does not provide propositions of law or general application,² the provisions confirmed in the Determination are the result of a merits-based evaluation within the RMA framework including the NPSET.

2. RELEVANCE OF THE DETERMINATION TO THE pORPS

2.1 In the context outlined above, it is submitted that the Determination, in combination with the Court's 29 August 2022 minute, can assist the Panel in relation to certain relief that Transpower seeks.

2.2 First, the Court has approved a bespoke approach to managing adverse effects of the National Grid. In particular, the RSI provisions in the PDP provide a consent pathway for the operation, maintenance, upgrade and development of the National Grid where it is impracticable to avoid adverse effects. This is broadly recognised in Policy 30.2.8.2:

Recognise that the provision of a secure and sufficient electricity supply to the District is likely to require National Grid assets to be located within the District's distinctive landscapes or natural environments, or areas of cultural or historic significance.

2.3 This policy direction is reflected in the final provisions of Chapter 6 (Landscapes and rural character) and Chapter 30 (Energy and utilities) that provide a bespoke consent pathway for the National Grid.

2.4 Under the provisions now confirmed in chapter 6 of the PDP, where the upgrading (apart from minor upgrading) or development of the National Grid would have an effect on landscapes (including ONFs and ONLs), the protection of those landscapes and associated values are expressly subject to policy 30.2.8.2.³

² Minute at [3].

³ Policies 6.3.3.6.a and 6.3.4.6.a.

- 2.5** Further direction is set out in Chapter 30. The relevant objectives in that Chapter recognise the functional and operational needs of RSI⁴, and further recognise the benefits that are realised by “the effective operation, maintenance, upgrade and development of the National Grid” and “the effective management of adverse effects of activities on the National Grid”.⁵
- 2.6** As a result of Policies 30.2.7.1A and 1B, a consent pathway exists for the National Grid where, due to the functional or operational needs of the Grid, it is impracticable to avoid adverse effects on indigenous biodiversity, Category 1 Heritage Features, wāhi tūpuna or special character values. Further, Policy 30.2.8.2B provides for a bespoke method to assess the environmental effects of the National Grid.
- 2.7** The Environment Court’s endorsement of this bespoke approach under Chapters 6 and 30, in light of the National Grid’s importance and the NPSET, can be taken at face value as confirmation that such an approach is appropriate within the RMA framework. This should provide the Panel with comfort that the relief sought by Transpower, for a bespoke policy for managing the environmental effects of the Grid, is appropriate.
- 2.8** More generally, the Court has approved an approach that places significant weight on the NPSET. It has approved amendments to the RSI provisions that better align with the wording in the NPSET,⁶ and has also made substantive changes to better give effect to the NPSET.⁷
- 2.9** Our legal submissions dated 13 March 2022 set out our reasons why the Panel should give significant weight to the NPSET.⁸ The Court’s approval of provisions with parallels to the relief sought by Transpower reinforces that such an approach is appropriate under the RMA’s framework.

4 Objective 30.2.7.

5 Objective 30.2.8.

6 Determination at [37] and [43].

7 At [45]. Refer also to the Court’s 29 August 2022 Minute at [16]

8 Legal submissions dated 13 March on Energy Infrastructure and Transport hearings at [4].

3. CONCLUSION

3.1 While Transpower acknowledges that the Court's approach is not binding on the Panel, the Determination provides a useful indication of an appropriate relationship between the national grid and other resources such as landscapes and biodiversity. The Court's conclusion that those provisions were appropriate can be taken at face value and represents an assessment that the provisions are in accordance with Part 2 of the RMA and any NPS (including the NPSET).⁹

3.2 As per the Court's approach, the relief sought by Transpower for a bespoke policy for managing the effects of the National Grid, and for the Panel to give significant weight to the NPSET, is appropriate for the pORPS.

Dated this 5th day of May 2023



M G Conway / S B Hart

Counsel for Transpower New Zealand Limited

9 RMA, s 74. The Environment Court determination of appeals on the PDP includes consideration of section 74 matters: *Bridesdale Farm Developments Ltd v Queenstown Lakes District Council* [2021] NZEnvC 189 at [30].